

Assembly Bill No. 2120

CHAPTER 802

An act to amend Section 12101.5 of the Public Contract Code, relating to state contracts.

[Approved by Governor September 27, 2004. Filed with Secretary of State September 27, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2120, Committee on Budget. Information technology grants.

Existing law generally sets forth the requirements governing state contracts for information technology goods and services.

This bill would additionally provide that, for contracts related to information technology integration or development projects that generate revenues or achieve savings over a quantifiable baseline of existing costs, state agencies would be required to consider, and would be authorized to incorporate, performance-based or share-in-savings contract terms to manage risks and create incentives for successful contract performance.

The people of the State of California do enact as follows:

SECTION 1. Section 12101.5 of the Public Contract Code is amended to read:

12101.5. (a) It is the intent of the Legislature that agencies of the state use an acquisition method that is compatible with their short- and long-term fiscal needs in contracts relating to commodities and information technology goods and services. State agencies should be able to specify their anticipated life cycle requirements that would become one of the criteria for contractor selection. These agencies should be given the choice of suppliers to meet statewide standardization needs, unique service requirements, application requirements, and long-term satisfaction criteria. There is a need for the state to enter into long-term contracts with annual cancellation and fund-out clauses, as required, to protect the state's interests as well as provide the option for multiyear renewals to encourage suppliers to develop higher levels of service and support throughout the contracts.

(b) The state may utilize multiple awards, including federal General Service Administration Multiple Awards Schedules and master agreements or contracts for goods, information technology, services, or consulting services. For purposes of this subdivision, a multiple award

is an award of an indefinite quantity contract for one or more similar goods, information technology, or services to more than one supplier. Except for possible multiple awards as permitted by this subdivision, and except as described in subdivision (d), all the requirements of this chapter pertaining to other types of information technology acquisitions shall be followed. The department shall ensure that multiple award schedules are in compliance with all other applicable statutes.

(c) Notwithstanding any other provision of law, state agencies, in exercising their contracting authority delegated by the department, may contract with suppliers who have multiple award schedules with the General Services Administration of the United States on the same terms, conditions, and prices if the supplier is willing to do so. The department may also develop multiple award schedules or agreements for use by state agencies in the same manner. The department shall determine the delegation contracting authority for agencies wishing to use multiple award schedules.

(d) For contracts related to information technology integration or development projects that generate revenues or achieve savings over a quantifiable baseline of existing costs, state agencies shall consider and may incorporate performance-based or share-in-savings contract terms to manage risks and create incentives for successful contract performance. Performance-based or share-in-savings contracts may have the following characteristics, among others:

- (1) Contract terms that specify business outcomes to be achieved, not the solution to be provided.
- (2) Contract terms that structure the contract to maintain maximum vendor commitment to project success and minimize risk to the state by sharing risk with the private sector.
- (3) Utilization of “best value” evaluation methods, which means to select the solution that will achieve the best result based on business performance measures, not necessarily the lowest price.
- (4) Contract terms that base payments to the vendor primarily on achieving predefined performance measures.

